

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CAROLE S. GAULER, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF PAUL L. KLEIN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:24-cv-00082-ART-CSD
ORDER ON MOTION TO DISMISS
(ECF No. 5)

This case is about a refund for tax overpayment. Plaintiff Carole Gauler sued the Internal Revenue Service (IRS) for not processing a tax refund sent during the COVID-19 pandemic. The Government responded that Gauler has not alleged facts allowing this Court to exercise jurisdiction. The Court agrees.

I. FACTUAL BACKGROUND

In September 2017, Plaintiff Gauler submitted a tax return that allegedly overpaid \$428,873 in tax. (ECF No. 9-1 at 4.) In late March or April 2020, she submitted an amended return seeking a refund of \$428,873. (*Id.* at 3–4.) Gauler and the Government agree that if this return had been received before September 2020, it would have been a timely request for a refund. (ECF No. 9-1 at 4; *see* ECF No. 10 at 2.) Gauler alleges that she “timely mailed” this amended return to the IRS, but she does not allege whether she used regular, certified, or registered mail or a private delivery service. (*See* ECF No. 9-1 at 4.)

Gauler and her Certified Public Accountant Michael McGowan attempted to verify that the return had been received. (*Id.* at 4–5.) McGowan kept a phone log for his calls to the IRS Estate and Gift Tax Section throughout September 2020. (*Id.* at 4.) He followed directives from the IRS issued during the COVID-19

1 pandemic instructing taxpayers to “not file a second tax return or contact the IRS
2 about the status of your return.” (*Id.*) Gauler alleges that throughout the
3 pandemic, the IRS instructed “taxpayers and tax preparers . . . not to refile
4 returns as this would only further compound the severe backlog already faced by
5 the IRS and would potentially cause further delay or processing complications.”
6 (*Id.* at 5.)

7 McGowan eventually reached an IRS representative on the phone. The
8 representative said that Gauler’s amended return had not appeared in their
9 system, “which . . . is not surprising due to COVID-19 furloughs,” and that
10 Gauler’s “best guess for a refund check is 3 to 5 months from now.” (ECF No. 9-
11 1 at 5.) Following this advice, Gauler and McGowan waited for the refund. (*Id.*)
12 McGowan again attempted calling the IRS section, but no one picked up. (*Id.*)

13 Months later, long after the deadline to submit an amended return had
14 passed, an IRS representative told McGowan that the IRS never received Gauler’s
15 amended return. (ECF No. 9-1 at 6.) Gauler resubmitted the amended return and
16 filed a claim explaining the circumstances leading to the late-filed amended
17 return. (*Id.* at 6–7.) The IRS rejected the resubmitted amended return and the
18 claim form as untimely. (*Id.* at 7.)

19 Gauler sued, alleging that the IRS failed to process her amended refund
20 and that the IRS’s warnings not to refile returns during the pandemic bars the
21 agency from arguing that Gauler failed to timely file her amended return. (ECF
22 No. 9-1 at 9.) The Government responded, arguing that Gauler has failed to allege
23 facts that would give this Court jurisdiction to review her claim. (ECF Nos. 5, 10.)

24 **II. PROCEDURAL HISTORY**

25 Gauler’s original complaint brought three causes of action. (ECF No. 1.) In
26 her response to the Government’s Motion to Dismiss, Gauler filed an amended
27 complaint which voluntarily dismissed two claims, leaving one claim under 26
28 U.S.C. § 7422. (ECF No. 9-1 at 9.) The Government has stated that it does not

1 object to the amended complaint being treated as the operative complaint. (ECF
2 No. 10 at 1.) Accordingly, the Court treats Gauler’s amended complaint (ECF No.
3 9-1) as the operative complaint.

4 **III. STANDARD OF REVIEW**

5 The federal rules permit motions to dismiss a claim for lack of subject
6 matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Arguments to dismiss for lack of
7 subject matter jurisdiction “may be facial or factual.” *Safe Air for Everyone v.*
8 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “In a facial attack, the challenger
9 asserts that the allegations contained in a complaint are insufficient on their face
10 to invoke federal jurisdiction.” *Id.* A court determines “whether the complaint
11 alleges sufficient factual matter, accepted as true, to state a claim to relief that is
12 plausible on its face.” *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1131 (9th Cir.
13 2012) (internal quotation marks and citations omitted). The party asserting
14 claims bears the burden of showing the court’s subject-matter jurisdiction. *See*
15 *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984
16 (9th Cir. 2008).

17 **IV. Analysis**

18 The Government argues that Gauler has failed to plead facts showing that
19 this Court may exercise subject-matter jurisdiction over Gauler’s claim for
20 refund. Gauler responds, arguing that the Government’s reliance on *Baldwin v.*
21 *United States*, 921 F.3d 836 (9th Cir. 2019), is misplaced. Gauler also argues that
22 equitable estoppel or equitable recoupment prevent the Government from
23 asserting its jurisdictional arguments.

24 **A. Lack of Facts Establishing Subject-Matter Jurisdiction**

25 The Government argues that Gauler has not alleged jurisdictional facts
26 that were held necessary in *Baldwin v. United States*, 921 F.3d 836 (9th Cir.
27 2019). (ECF No. 5 at 9.) Gauler responds that the Government’s motion to dismiss
28 is a factual attack on jurisdiction which goes to the merits of her claim and

1 requires further proceedings. (See ECF No. 9.)

2 Federal district courts lack subject-matter jurisdiction over untimely tax-
3 refund suits. *United States v. Dalm*, 494 U.S. 596, 608–09 (1990). To establish
4 subject-matter jurisdiction, a taxpayer must allege facts that show the tax refund
5 was timely filed. *See Baldwin*, 921 F.3d at 841. If it is not clear that the IRS
6 received the tax refund, certain facts establish timely filing: proof of actual
7 delivery, use of registered or certified mail, or use of a duly designated private
8 delivery service. *Id.* at 840–42 (citing 31 C.F.R. § 301.7502-1(e)(2)). Without these
9 facts, a district court “[lacks] the authority” to hear a taxpayer’s suit. *Id.* at 839.

10 Gauler has not alleged the required facts to show that her return was timely
11 filed. Gauler alleged that her refund was mailed to the IRS. (See ECF No. 9-1 at
12 4.) She did not allege that her refund was actually delivered, that she sent it by
13 registered or certified mail, or that she sent it through a designated private
14 delivery service. (*Id.*) Without one of these facts alleged in the complaint, “the
15 allegations . . . are insufficient on their face to invoke federal jurisdiction.” *Safe*
16 *Air for Everyone*, 373 F.3d at 1039.

17 Gauler argues that it is improper to grant a motion to dismiss because the
18 fact of whether she timely submitted her refund is an element of her claim. (ECF
19 No. 9 at 4.) The Government responds that this rule does not apply to a facial
20 jurisdictional challenge and that the elements of Gauler’s refund claim are
21 different than those required to establish jurisdiction. (ECF No. 10 at 8–10.) When
22 jurisdictional facts are intertwined with the merits of an underlying claim, a court
23 may not resolve disputed facts in a 12(b)(1) motion. *See Rivas v. Napolitano*, 714
24 F.3d 1108, 1112–13 (9th Cir. 2013). This rule does not apply in a facial challenge,
25 in which a court does not resolve any disputed facts. Accepting all pleaded facts
26 in Gauler’s Complaint as true, it fails to establish jurisdiction because it is
27 missing an allegation that the IRS actually, timely received the amended return
28 or that certified or registered mail or a duly-filed delivery service was used to carry

1 out timely delivery. Without an allegation corresponding to this jurisdictional
2 requirement, the case may not proceed.

3 **B. Applicability of *Baldwin v. United States***

4 Gauler argues that *Baldwin* does not apply because of its procedural
5 posture, and that if it does, it still requires the case to proceed beyond the
6 pleadings stage. (See ECF No. 9.)

7 Gauler argues that *Baldwin* does not apply because the case had proceeded
8 through a bench trial, and this case is at the pleading stage. (*Id.* at 6.) In *Baldwin*,
9 the plaintiffs claimed that their employees mailed their amended return, but the
10 IRS never received it. 921 F.3d at 841. The district court found that the Baldwins
11 showed timely filing through their employees testifying that they had mailed the
12 amended tax return to the IRS. *Id.* The court decided in favor of the Baldwins on
13 the rest of their refund claim, and the IRS appealed. *See id.* The Ninth Circuit
14 dismissed the case for lack of jurisdiction. *Id.* at 839 (district court “lacked the
15 authority to hear” the suit). A jurisdictional holding applies to cases at the
16 pleading stage, even if it reverses a case that proceeded to judgment. *See Rainero*
17 *v. Archon Corp.*, 844 F.3d 832, 841 (9th Cir. 2016) (“objections to subject matter
18 jurisdiction may be raised at any time”). It is appropriate to apply *Baldwin* here
19 to avoid proceeding to judgment, then having the case dismissed for lack of
20 jurisdiction at summary judgment or on appeal.

21 Gauler argues that because *Baldwin* requires the Plaintiff to “prove she
22 submitted the claim,” her case must proceed beyond the pleading stage. (ECF No.
23 9 at 6.) Gauler is correct that extrinsic evidence would later be required to reach
24 judgment, but the complaint must also allege jurisdictional facts. *See Allen v.*
25 *Santa Clara Cnty. Corr. Peace Officers Ass’n*, 400 F. Supp. 3d 998, 1001 (E.D.
26 Cal. 2019), *aff’d*, 38 F.4th 68 (9th Cir. 2022) (citing *Savage v. Glendale High Union*
27 *Sch. Dist. No. 205*, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003)). To prevail, Gauler
28 must prove these facts, and at the pleading stage she must allege them.

C. Equitable Arguments

Gauler argues that the doctrines of equitable estoppel and equitable recoupment should allow her case to move forward. Both theories rely on the premise that the amended return “would have been timely resubmitted but for the unprecedented backlog and the IRS publicly directing taxpayers not to refile.” (ECF No. 9 at 6.)

To support her theory based on equitable estoppel, Gauler points to *Schuster v. Commissioner of Internal Revenue*. (ECF No. 9-1 at 7 (citing *Schuster*, 312 F.2d 311, 318 (9th Cir. 1962))). In *Schuster* an outgoing commissioner told the petitioners that they were not liable for a tax deficiency, and the incoming commissioner told them that they were. 312 F.2d at 313, 318. The Ninth Circuit found that one petitioner could make an estoppel claim. *Id.* at 318.

Schuster does not apply here. Unlike in *Schuster*, the IRS never changed its position about what proof would satisfy the agency or a court that the amended return had been timely filed: proof of actual delivery, registered or certified mail, or a duly designated private delivery service. 31 C.F.R. § 301.7502-1(e)(2). *Schuster* is distinguishable because it did not involve an equitable exception to a filing deadline, a practice emphatically discouraged by the Supreme Court. *United States v. Brockamp*, 519 U.S. 347, 351, 354 (1997) (holding that Congress did not intend equitable doctrines to apply to the statute of limitations in tax refund cases); see also *Danoff v. United States*, 324 F. Supp. 2d 1086, 1099–1100 (C.D. Cal. 2004), *aff’d*, 135 F. App’x 950 (9th Cir. 2005) (finding that courts after *Brockamp* “uniformly have held that equitable principles, including the doctrine of equitable estoppel, cannot toll statutes of limitation in tax refund suits” (emphasis in original) and collecting cases). Accordingly, equitable estoppel does not apply here.

Gauler points to equitable recoupment as a theory that could permit her claim to move forward, citing *United States v. Dalm*. (ECF No. 9-1 at 7 (citing

1 *Dalm*, 494 U.S. at 610).) But in *Dalm*, the Court acknowledged that in a timely
2 suit for refund a court may exercise jurisdiction over an earlier claim. 494 U.S.
3 at 610. The issue here is that this suit is untimely as pled, and the Court lacks
4 jurisdiction. Accordingly, equitable recoupment does not apply, and this Court
5 may not hear Gauler's equitable arguments based on the allegations and
6 arguments before it.

7 **D. Dismissal With or Without Prejudice**

8 Because it is not clear from the pleadings that Gauler lacks proof of actual
9 delivery, use of certified mail or registered mail, or use of a duly designated private
10 delivery service, the Court dismisses the complaint without prejudice and with
11 leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).


12 **V. CONCLUSION**

13 The Court instructs the Clerk to file Plaintiff's amended complaint (ECF No.
14 9-1) as the operative complaint in this suit.

15 The Court also grants the Government's motion to substitute Connor
16 Pestovich for Samuel Holt as counsel for the Government. (ECF No. 20.)

17 The Court grants the Government's motion to dismiss (ECF No. 5) Plaintiff's
18 amended complaint without prejudice and with leave to amend by Friday, April
19 11, 2025.

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21 DATED THIS 14th day of March, 2025.

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23 _____
24 ANNE R. TRAUM
25 UNITED STATES DISTRICT JUDGE
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